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File No. B. Returned Soldiers 5/46

Legal DEPARTMENT

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Subject:—

Returned Soldiers Land Settlement Bill.

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File No. B Returned Soldiers, '46.

Std. Sectt. Slip 24 B e.

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CONTENTS.

Legal Department File No.D. Returned Soldiers/ 1946.

Sr. No.	R.I./ O.No.	Subject.	Pages.
		A Bill to provide for the settlement of Returned Soldiers on land.	
1.	~~6821~~ 23-8-46	Draft Bill.	1-44 pp.1-43 not copied)
2.	~~7670~~ 17-10-45	Remarks on certain provisions. ...	45-46.
3.	~~8234~~ 3-11-45	Draft Bill.	47-62. (47-62 not copied)
4.	---	Draft Bill.	63-70 (Not copied)
5.	~~1609~~ 26-2-46	Remarks for additions and alterations.	71-72
6.	~~2146~~ 16-3-46	---do---	73-74
7.	G.C.R.C.D. ~~No.2572/32~~ 16-8-46.	Government decision - not to proceed with the Bill further. ...	75-76.

HTP.
18/5/56.

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Office of the R.L.A.

The draft Bill at pages 21-60 has been amended in the light of the noting in R.C.D. at pages 61-65. The paragraphs of R.C.D. note and the note of Secretary, R.C.D. are taken up in the order of the clauses to which they pertain.

2. Secy. R.C.D's marginal note against Para.2 of R.C.D. note at page 61.- The expression "Official Gazette" has been introduced in para.4 of the Adaptation Order and the initial letters of both the words are written in capital.

3. Para.1 of Secy.R.C.D's note at p.66.- There is no objection to amending clause 2(5) as shown at p.23 ante on the lines indicated by Secy.,R.C.D. The reference to the district is retained in view of clause 4(a) which requires that the area should not cover more than one district.

4. Para.3 of R.C.D.note at p.61.- Clause 2(8)(i)(a): The wording adopted in R.L.A's draft closely follows that in section 8(1) of the Government of India Act, 1935.

5. Para.4 of Secy. R.C.D's note at p.66.- Clause 5(1) may be recast thus: "Nominated members of the Returned Soldiers Land Commission and the Board shall etc."

6. Para.5 of Secy.R.C.D's note at p.66.- The reference to "amount" in clause 7(d) is quite correct. Leases of agricultural land may be given for fine, premium or money advanced in lieu of or in addition to rent. Since under the said clause the owner who proposes inter alia to transfer his land on lease is required to give notice in the prescribed form containing the particulars specified, it is necessary to specify the amount of premium or fine etc. for which the land is proposed to be leased.

7. Para.6 of Secy. R.C.D's note at pp.66-67.- The revised clause 8 suggested by him is not quite necessary. Since Secretary R.C.D. desires the Board forthwith to give an additional intimation to the owner of the date of receipt of the notice by the Board, sub-clause (1) of clause 8 may be slightly amended as follows:-

"8(1) On receipt of a notice under section 7, the Board shall forthwith send by post to the owner intimation in writing of the date of receipt of the notice, and shall within a period of sixty days after such date send to him by post a further intimation in writing of its intention, if any, to purchase or take on lease the land specified in the notice, and send a copy of the intimation to the Registrar of the district appointed under the Indian Registration Act, 1908."

Clause 13 is also consequentially amended. The words "by post" used in the above draft clause 8(1) will receive the protection of section 28 of the Bombay General Clauses Act, 1904; this seems very necessary since otherwise miscarriage by ordinary post would upset transfer effected by the owner within the limits of clause 13. Clause 13 as revised also renders the new draft clause 8(3) on p.67 unnecessary.

8. Para.7 of Secy.R.C.D's note at p.67.- Clause 9 is redrafted as desired by Secy.R.C.D. Sub-clause (3) of clause 9 proposed by Secretary, R.C.D. makes the Collector an appellate authority against the decision of the Board to purchase or take any land on lease. It will be noticed that the Collector is already a member of the Board and possibly its President. This position is avoided in the redraft.

9. Para.9 of Secy.R.C.D's note at p.68.- Clause 13(1)(b) is redrafted (so as to combine the relevant provisions in draft clause 13(1)(b) and (c) on p. 49.

10. The other amendments suggested in R.C.D. notes have been carried out in the Bill.

11. The point taken in paragraph 2(5) of Secretary,R.D's note at p.70 is not correct. Clause 12(4) provides thatthe provisions of section 10 shall apply to an order made under sub-section (2) of that section. The reference to any purchase or lease under section 10 in clause 14 will cover cases both under section 10 and under section 12. No addition to clause 14 is

MRP.
19/5/56.

is therefore necessary.

The other points taken up in paragraph (2) of Secretary, R.D's note are for the consideration of the N.C.D. in the first instance.

Sd. P.N.Moos
16/8/45
Remembrancer of Legal Affairs.

U.N.to N.C.D.,No.6221, dated the 22nd August 1945.

MRP
18/8/45.

Office of the R.L.A.

Para.2(1) of Secy., R.D's note:- Although sections 27 and 37 of the Guardians and Wards Act, 1890, ensure that the guardian take all necessary steps with regard to a sale of his ward's property in order to save it becoming void under clause 13 of the Bill it would be safer to put the position beyond doubt especially in view of the penalty clause 17 and amend the definition of "owner" in clause 2(6) by adding to it the following:-

"and also includes where such owner is a minor or a lunatic the guardian or manager of his estate."

2. Para.2(2) of Secy., R.D's note:- The presumption of Secy., R.D. is correct. As regards a provision in clause 8 requiring the Registrar to pass the intimation to the Mamlatdar for being noted in the 'Record of Rights', this is not expedient. The intimation by itself does not transfer any interest and it cannot even be brought on the register books of the Registrar. It is only useful to enable the Registrar to know whether the transfer is made after notice to the Board. As regards the purchaser, he must know even in the absence of any entry in the Record of Rights that notice of any sale intended to be made to him must be given to the Board and when this is done he is bound to know whether any prior intimation of pre-emption has been issued by the Board.

3. Para.2(3) of Secy., R.D.'s note:- This is mainly an administrative point and R.L.A. agrees with Secy., R.C.D. that it may be left out for the present.

4. Para.2(4) of Secy., R.D's note:- It is necessary to provide for the settlement of disputes between claimants in respect of the amount determined as the price or rent under clause 9. Clause 10 as framed at present provides that on the deposit of the amount the Collector shall pay it to the

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owner. A fresh sub-clause (3) should be added to clause 10 on the lines of section 30 of the Land Acquisition Act, 1894, as follows:-

"If any dispute arises as to the apportionment of the amount referred to in sub-section (1) or any part thereof or as to the persons to whom the same or any part thereof is payable the Collector shall ~~xxx~~ refer the parties concerned to have the dispute settled in a civil court. Until such settlement the amount shall remain with the Collector and no interest shall be payable for the period required for such settlement."

Sd. P.N.Moos
13/10/45
Remembrancer of Legal Affairs.

U.R.to R.D., No.7670, dated the 17th October 1945.

MRP.
18/5/56.

Office of the R.L.A.

The following clause 10A is suggested for insertion after clause 10 of the Bill:-

"10A. Where the Board is of opinion that the land in relation to which it has intimated its intention to purchase or take on lease under section 8 is likely to remain uncultivated during any cultivating season unless immediate possession is taken, the Board may, after the giving the owner fifteen days' notice, the possession of the land; and thereupon the owner's interest in the land shall vest in the Board pending the grant of a certificate referred to under section 10, and thereafter it shall vest in the returned soldier or the Board by purchase or lease, as the case may be, in accordance with the certificate."

R.D. should consider whether the clause is administratively suitable and obtain Government orders as to its insertion. If Government agrees to the insertion the clause will need renumbering and may involve consequential numbering in the body of the Bill.

Gd. P. H. Moos
3/11/45
Remembrancer of Legal Affairs.

U.R.to R.C.D.,No.8234, dated the 3rd November 1945.

MRP.
18/5/56.

Office of the R.L.A.

I In view of the R.C.D. notes at pages 127-29 ante sections 7, 8 and 14(2) may be amended as follows:-

"Section 7.- Any owner who proposes to transfer his land situated in xxxx a notified area by sale or lease to any one shall give notice .....

Section 8.- On receipt of a notice under section 7 the Board ..... a further intimation in writing of its intention, if any, to purchase, if the owner proposes to transfer by sale, or to take on lease, if the owner proposes to transfer by lease, the land specified in the notice .....

Section 14.- (2) Any transfer by sale or lease of land in respect of which a notice is received under sub-section (1) of section 13 shall be void if the transfer of such land by sale or lease, as the case may be, is made otherwise than in accordance with this Act ....."

2. According to the amendments suggested above the Board will have to purchase land if the owner proposes to transfer the same by sale or to take on lease if the owner proposes to transfer the same by lease; and the transfer of land by sale or lease will be void according as the Boad has given notice to purchase the land or to take it on lease.

3. It will be seen from the above that transfer of land by gift or mortgage is omitted from the provisions of the proposed Act. But it may be pointed out that if reference to mortgages is omitted it might leave a loophole in the Act. It is possible that an owner who intends to sell his land will, in order to defeat the Board's powers, not execute a sale deed but enter into a mortgage by conditional sale or an English mortgage. According to the scheme of the Act the Board has power either to purchase or lease the land. Since it is not feasible for the Board to be a mortgage it is suggested that the Board should have power to purchase land outright

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in such cases, that is, where the owner proposes to enter into a mortgage by conditional sale or an English mortgage. As the point is an administrative one the R.C.D. should consider whether power should not be given in such cases to the Board to purchase the land outright.

4. As suggested by the Government of India a new sub-section may be added to section 5 on the following lines:-

"(3) The term of office of a member nominated to fill a casual vacancy shall commence from the date of nomination and shall continue so long only as a member in whose place he is nominated would have been entitled to hold office if the vacancy had not occurred."

Sd. P.N.Moos
26/2/46.
Remembrancer of Legal Affairs.

U.O.No. to R.C.D., No. 1609, dated the 26th February 1946.

MRP.
18/5/56.

Office of the R.L.A.

The proposal of the R.C.D. to add a clause empowering the Board to examine all cases of transfer of land of fraudulent nature and to purchase the land in all such cases is not feasible. ✕ In the first place the transaction of mortgage by conditional sale or an English mortgage is not fraudulent in itself. It is recognised by the Transfer of Property Act, 1882. Further in the case of gifts there is no such thing as a bogus transaction which can be said to defeat the provisions of the Bill as is assumed in the R.C.D. note.

2. The Board cannot appropriate to itself the powers of a court, and in any case if it were to hold an enquiry into such cases, litigation would follow.

Cases of ostensible gift covering what is really a sale are likely to be very few.

If provision is made to give the Board the option of purchase in the case of English mortgage and mortgage by conditional sale, it is expected that the requirements of the case will be met.

The object can be achieved by making the following amendments:

(1) The following two definitions should be inserted in clause 2 of the Bill in their proper places renumbering the other definitions:-

"English mortgage" has the meaning assigned to it in clause (c) of section 58 of the Transfer of Property Act, 1882.

IV of 1882.

"Mortgage by conditional sale" has the meaning assigned to it in clause (c) of section 58 of the Transfer of Property Act, 1882."

IV of 1882.

(2) Sections 7, 8 and 14 should be amended to read as follows:-

"Section 7.- Any owner who proposes to transfer his land situated in a notified area by sale, or mortgage by

conditional sale, or English mortgage or lease, to anyone shall give notice .....

Section 8.- On receipt of a notice under section 7, the Board ..... a further intimation in writing of its intention, if any, —

(a) to purchase, if the owner proposes to transfer it by sale or mortgage by conditional sale or English mortgage;

(b) to take on lease, if the owner proposes to transfer it by lease;

the land specified in the notice .....

Section 14.- Any transfer by lease, or sale, or mortgage by conditional sale or English mortgage of land in respect of which a notice is received under sub-section (1) of section 13 shall be void if such transfer is made otherwise than in accordance with this Act."

3. Para.4 of R.C.D's note at p.148 ante.- The drafting change suggested in para. 2(5) of the G.S's note at page 125 has already effected by the R.L.A. in clause 7 of the Bill as revised at page 145. The G.S's note has not suggested any amndment of clause 13 nor is it necessary to amend it.

4. The view taken in para.5 of R.C.D. note at pp.128-129 ~~ante~~ that clause 1(3) of the Bill makes it clear that the Act shall come into force in such area as the Provincial Government by notification in the Official Gazette direct dispenses with the necessary reference to notified area in clauses 7 and 13 is not correct. 'Notified area' as defined in clause 2(5) of the Bill means the area of a district or part of a district notified as such by the Provincial Government in the Official Gazette for the purposes of the Act. The reference to notified area both in clauses 7 and 13 is therefore necessary.

Sd. S.L.Chaudari
16/3
for Remembrancer of Legal Affairs.

U.R.to R.C.D. No.2146, dated the 16th March 1946.

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16/3/56

Returned Soldiers' Land Settlement Bill.

Government of Bombay,
Reconstruction Department,
Circular No.8572/39,
Bombay Castle, 19th June 1946.

Circular of Government.

Government has decided not to proceed with the enactment in its present form of the Returned Soldiers' Land Settlement Bill, 1946, the draft of which was forwarded to you by the Manager, Government Central Press, in accordance with paragraph 3 of Government Resolution, No.8572/39, dated 19th February 1946.

By order of the Governor of Bombay,

S.R.Bidikar,
Assistant Secretary to the Government of Bombay,
Reconstruction Department.

To

The Commissioners of Divisions

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The Remembrancer of Legal Affairs,

x x x x x

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